IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Dallekhan & Sons
vs.
Indian Oil Corporation Ltd. & Rajkumar

S.B.Civil Misc. Appeal No.1944/2004 against the order Dated 16.12.2004 passed by Shri Pankaj Bhandari, Addl. District Judge No.3, Jodhpur in Civil Misc. Case No.159/2004.

Date of Judgment: September 14, 2005.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. M.C. Bhoot, for the appellant.

Mr. J.P. Joshi)
Mr.R.Chouhan), for the respondent IOC.

Mr. M.S. Singhvi)
Dr. A.A.Bhansali), for respondent No.2-Caveator.

REPORTABLE

BY THE COURT:

Brief facts of the case are that the plaintiff filed suit for permanent injunction with a prayer that the property described in the advertisement issued by IOC published in daily news paper Bhaskar dated 18.2.2004 offering retail outlet shown at item no.148 Bhagat Ki Kothi, Jodhpur should not be and cannot be

identified with the petrol pump which was allotted to the plaintiff by IOC on 27.2.2004 and in pursuance of which, the plaintiff has already started to run the petrol pump after getting license from the District Supply Officer, Jodhpur. It is submitted that the retail outlet at Bhagat Ki Kothi is proposed on the Pali - Bhagat Ki Kothi road whereas the plaintiff's petrol pump is situated at Jodhpur City – Salawas road.

According to the appellant-plaintiff, the plaintiff was invited by the respondent-IOC itself to help IOC in the matter of obtaining NOC for IOC from the District Collector, Jodhpur which they could not get despite the fact that they submitted application on 30.5.2002 seeking No Objection Certificate for installing the petrol pump. The plaintiff agreed and helped IOC in getting the NOC from the learned District Collector, Jodhpur and the District Collector, Jodhpur gave NOC to IOC, therefore, the plaintiff was invited by the IOC officers on 22.2.2004 and he was asked to submit application for allotment of petrol pump. The plaintiff, therefore, submitted an application before IOC for getting the petrol pump. The application is dated 23.3.2004 but was submitted before IOC on 27.2.2004. The plaintiff's application was considered on the same day i.e. 27.2.2004 itself and on the same day, the plaintiff was asked to submit undertaking on stamp paper. On the same day, the

plaintiff purchased the stamp of Rs.100/- and submitted undertaking forthwith on 27.2.2004 itself. Thereafter, on 5.3.2004 a letter was issued by the officer of IOC to the District Supply Officer for issuing trading licence in favour of the plaintiff. The District Supply Officer gave license for running the petrol pump in the name of the plaintiff on IOC's recommendations. This license issued by the District Supply Officer, Jodhpur is valid upto 31.12.2005.

According to learned counsel for the plaintiff, two facts are clear (1) that the petrol pump advertised by the respondent IOC at S.No.148 cannot be identified with the petrol pump of the plaintiff and (2) the petrol pump was allotted to the plaintiff on adhoc basis by respondent IOC for a period upto 31.12.2005 for the consideration of the work done by the plaintiff for IOC. Therefore, the plaintiff had and still has a reasonable expectation that its license to run the petrol pump will be continued upto further period of two years and during this period, the IOC has no power to allot the petrol pump to any person. Along with the suit, an application for temporary injunction was also submitted.

Before the trial court, the respondent no.2 Rajkumar submitted an application for being impleaded as party defendant under Order 1 Rule 10 CPC and prayed that the petrol pump in question has been

allotted to him as he has been duly selected by the Selection Board. The respondent no.2, therefore, was impleaded as party by the trial court.

Both the respondents submitted separate replies to the injunction application.

The respondent IOC submitted reply to the injunction application before the trial court and stated that the petrol pump advertised at S.No.148 in the newspaper is the same petrol pump which is presently in occupation and is being run by the plaintiff. For that purpose, the IOC submitted various documents and also relied upon the various documents produced by the plaintiff and the documents which were executed and signed for the plaintiff itself. The IOC also submitted that the petrol pump has rightly been advertised and the petrol pump was allotted to the plaintiff only on adhoc basis which is apparent from the various documents of the plaintiff himself. It is also submitted that in view of the fact that the petrol pump was allotted to the plaintiff on clear understanding that the petrol pump is allotted only for a period of one year or till selected candidate is available, the plaintiff has no right to occupy the petrol pump and further the plaintiff is bound by its undertaking and therefore, bound to deliver the possession of the petrol pump to the respondent IOC as per agreed condition of allotment. It is submitted

that the selection took place after the advertisement and the respondent no.2 has been given letter of intent to run the petrol pump.

The respondent no.2 submitted reply to the application and challenged all the facts which were alleged by the plaintiff and pleaded that the petrol pump is reserved for the person of physically handicapped category. The said petrol pump should not have been allotted to the plaintiff and as it could not have been allotted to the plaintiff when the petrol pump was reserved and process for selection of eligible candidate had already commenced and advertisement inviting applications from eligible candidates was issued by the IOC about only 9 days ago on 18.2.2004, therefore, there was no reason for giving the petrol pump on allotment basis by selecting a person who is not competent or eligible to get the petrol pump. The plaintiff was knowing from inception that the process of selection of eligible candidate has already commenced, therefore, he should not have expected that the selected allottee would be selected to wait for two years or even upto 31.12.2005.

The trial court dismissed the injunction application of the plaintiff holding that the petrol pump allotted to the plaintiff is in the area at Bhagat Ki Kothi and the advertisement has been issued

for the petrol pump at Bhagat Ki Kothi. The plaintiff himself admitted that the petrol pump allotted to the plaintiff is situated in Bhagat Ki Kothi area and there is no reason to hold that the petrol pump allotted to the plaintiff is a different petrol pump than the petrol pump advertised by the IOC. The trial court also rejected the plea of "reasonable expectation" of the plaintiff for getting license for further period. The trial court also held that in view of the undertaking given by the plaintiff by executing an undertaking on a stamp paper of Rs.100/- he undertook that on receipt of the notice, the petrol pump will be handed over to IOC by the plaintiff and he will not claim any compensation or damages.

Learned counsel for the appellant vehemently submitted before this Court that allotment of adhoc petrol pump for a limited period till the process of final selection is complete is the mode of allotment of petrol pump and the IOC itself is following the procedure prescribed and for that purpose. The plaintiff placed on record the copies of the documents of IOC itself whereby the IOC awarded the license to M/s. Dev Petroleum Point and for that purpose. The IOC issued a letter containing terms and conditions for temporary allotment of the retail outlet (at Sirohi) for Corporation owned sight. In the letter of offer of IOC in that case, there is a specific clause (4) which

provides that the agreement shall remain in force for a period of one year commencing from a particular date or till appointment of regular dealer is made or till it is terminated by the corporation earlier. In that case, the allottee is not entitle for any compensation or damages from IOC. Since the plaintiff's allotment was not only for such limited period, therefore, no such letter was given to the plaintiff. Copy of similar letter alleged to have been given to plaintiff dated 27.2.2004 is a fabricated and is a subsequently created document. It is also submitted that had there been a letter of such type in the case of the plaintiff, then the District Supply Officer would have incorporated the same condition of the limited period of license which has been done in the case of M/s. Dev Petroleum Point.

Learned counsel for the appellant further vehemently submitted that in fact, since the two petrol pumps are entirely different, therefore, on 18.2.2004, the IOC itself published notice inviting offers and if the plaintiff's allotted petrol pump was the petrol pump included in the proposed petrol pump available for allotment, than there was no reason for them to allot the petrol pump to the plaintiff just after publishing the notice inviting applications.

Learned counsel for the appellant also submitted that apart from the above, since the plaintiff was asked to do the work for IOC and he did so and

obtained NOC from the Collector, Jodhpur, therefore, they instigated (उत्तप्रेरित) the plaintiff to submit the application for allotment of petrol pump and it cannot be presumed that such allotment can be of such a short period of less than even one year. Therefore, according to learned counsel for the plaintiff/ appellant, the plaintiff's legitimate expectation of renewal of license of petrol pump for two years is reasonable expectation and cannot be denied. It is also submitted that since the license period is upto 31.12.2005, the IOC has no right to terminate the license of the appellant.

According to learned counsel for the appellant, under clause NO.34 of the terms of the license, the license can be terminated. It is not the case of IOC that the plaintiff has committed breach of any term and condition of license nor it is a case of IOC that they have terminated the license under Clause 34. Therefore, in any case, the IOC has no right to identify the petrol pump of the plaintiff with the petrol pump advertised by them and if they identified it, then the respondents have no right to allot the petrol pump to other persons on the grounds mentioned above.

Learned counsel for the respondent no.1 IOC vehemently submitted that all the documents produced

by the plaintiff/appellant himself proves beyond doubt that the petrol pump in question is “company owned” petrol pump. This petrol pump is reserved for handicapped person. The applications from handicapped persons were invited by the IOC by public notice dated 18.2.2004. There was possibility of taking some time in completion of selection process and to take benefit of IOC's investment to provide facility to public, petrol pump was allotted to the plaintiff absolutely on adhoc/temporary basis. The plaintiff submitted a written undertaking on stamp paper of Rs.100/- before the IOC wherein it clearly mentioned that it is getting dealer-ship of the petrol pump only on adhoc basis and that it will handover the petrol pump to the IOC in seven days from the receipt of the notice from the IOC. It is also submitted that before allotment of petrol pump, a letter was given to the plaintiff by the IOC which is also dated 27.2.2004 and therein is condition to the effect that the plaintiff will hand over the vacant possession of the retail outlet immediately after expiry of seven days from the date of notice. It is also submitted that the plaintiff had no right to continue with the running of the petrol pump and the plaintiff is bound to hand over possession of the said petrol pump to IOC.

Learned counsel for IOC further submits that the plaintiff did not disclose all true and correct facts in the suit and in the injunction application rather

the plaintiff gave wrong statement of fact in the injunction application and he suppressed that he took the petrol pump only on adhoc basis by submitting an application before IOC and he is under obligation to hand over possession to IOC in terms of undertaking given by him.

It is also submitted that in pursuance to the advertisement dated 18.2.2004, the process has been completed and the respondent no.2 was selected by due process, therefore, the respondent no.2 is entitled to have the benefits of petrol pump.

Learned counsel for the respondent no.2 vehemently challenged the action of IOC also while challenging the contention of the appellant. According to learned counsel for the respondent no.2, in fact, it is nothing but a fraud played upon in the matter of allotment of petrol pump in as much as that the petrol pump was already reserved for physically handicapped persons. It is strange that the petrol pump was offered to the public (only handicapped persons) by publishing advertisement on 18.2.2004 and all the proceedings for allotment of the same petrol pump has been completed by IOC not in 9 days thereafter but only in one day on 27.2.2004, which is ninth day from public notice. It is also pointed out that the application for allotment of petrol pump was submitted by the plaintiff on 27.2.2004, it was considered and

allotment order was issued on 27.2.2004 itself. The documents required by IOC were executed and submitted by the plaintiff to IOC on 27.2.2004 itself. This clearly shows that how the matter was cleared by IOC officers. It is also submitted that a person who was not eligible for regular allotment of the petrol pump was given petrol pump.

It is also submitted that in view of the statement made by the plaintiff in his plaint itself and in view of the statement made before this Court, it is clear that the petrol pump was obtained by the plaintiff for consideration which can be said to be unlawful consideration because of the simple reason that the IOC has no right or legal or moral support to allot petrol pump to a person for consideration of service rendered by anybody may he by their products dealer. According to learned counsel for the respondent no.2, the Hon'ble Supreme Court condemned the arbitrary allotment of petrol pumps way back in the year 1996 in Common Cause's case and still worst than that procedure is the foundation of the claim of the plaintiff.

In rejoinder, learned counsel for the appellant vehemently submitted that the documents relied upon by the respondents clearly reveal that the letter dated 27.2.2004 projected to has been issued to the plaintiff is a fabricated document. For this, learned

counsel for the appellant vehemently submitted that a perusal of the letter dated 27.2.2004 will reveal that the document was not signed by the person who should have signed it despite the fact that, that person was very much available in the office. Therefore, initially the word “Sd/-” has been written and thereafter, it has been signed by someone else for the officer. It is also submitted that in the letter dated 27.2.2004, it has clearly been mentioned that the dealer shall have to countersign the document and return the signed copy to IOC but IOC failed to submit countersigned letter dated 27.2.2004 of the plaintiff. Therefore, the terms mentioned in the letter dated 27.2.2004 were never shown to the plaintiff nor the plaintiff agreed for the said conditions.

Learned counsel for the appellant also submitted that the undertaking given on stamp paper of Rs.100/- by the plaintiff is only proforma given by the IOC for signing and the plaintiff handed it over to IOC after signing it. In the plaintiff's undertaking dated 27.2.2004, there is no mention of number of letter and date of letter and the column for that has been left blank, therefore, it is clear that on 27.2.2004, when the petrol pump was allotted to the plaintiff/appellant, the letter dated 27.2.2004 was not in existence.

This appeal was heard on 7.9.2005 and it was

posted and listed for dictation of order on 9.9.2005 but the order was not dictated on that date and the matter was posted for dictation of order on 13.9.2005. On 13.9.2005, an application under Order 11 Rule 12 read with Section 151 CPC has been filed by the appellant stating therein that the appellant came to know on 9.9.2005 that the petrol pump dealership of the respondent no.2 has already been cancelled by the the respondent no.1-defendant-Indian Oil Corporation Limited (for short "IOC"). In view of this, according to learned counsel for the appellant, the respondent no.2 has no locus standi in the appeal as well as he will not have any locus standi in the suit. In the application, it is also submitted that before publication of news-item inviting offer for the retail petrol pump outlet by the IOC, a detail survey about exact location for the retail outlet was conducted and a plan was also prepared that the document has not been produced by the respondent no.1 and the respondent no.1 concealed the original proceedings regarding grant of adhoc dealership to the appellant. The appellant, therefore, prayed that the respondent no.1 may be directed to produce the order cancelling the dealership of the respondent no.2 and original proceedings taken for granting dealership to the appellant by the competent authority of the IOC who is Senior Divisional Retail Sales Manager of IOC at Jodhpur.

No reply has been filed by learned counsel for the respondents.

However, learned counsel Mr. JP Joshi appearing for the respondent no.1 submits that as per the telephonic information received by him on 9.9.2005, the respondent no.1 has cancelled the letter of authorisation granted to respondent no.2.

Learned counsel for the respondent no.2 submits that he has not received any cancellation order yet. Learned counsel for the respondent no.2 also submitted that the application of the appellant after completion of arguments, may it be before the dictation of judgment, is not maintainable.

I have considered the submissions of learned counsel for the parties and perused the record.

The respondent no.2 remains as party or had locus standi and lost his locus standi is not relevant for the purpose of finding out the merit of the case of the plaintiff. The relevant is the fact that even if the respondent no.2 remains as party or contest the matter or not, the relief claimed by the plaintiff is against the respondent no.1 also and the plaintiff is still claiming relief against the respondent no.1, therefore, it will be first worthwhile to examine the merits of the case of the plaintiff.

It is clear from the facts mentioned in the plaint itself that the plaintiff's case is that the plaintiff helped the IOC for getting NOC from the District Collector, Jodhpur. The IOC could not get the NOC from the Collector, therefore, the officers of IOC took help of the plaintiff for getting NOC from the Collector for opening retail outlet. The plaintiff provided all the facilities and helped the officers of IOC for obtaining the NOC from District Collector, Jodhpur on the basis of which IOC got the explosive license and because of this work done by the plaintiff, the IOC decided and rather according to the plaintiff, instigated the plaintiff to submit application for allotment of petrol pump and thereafter the proceedings for accepting application for allotment to allot the petrol pump to the plaintiff were completed in a day on 27.2.2004. It will be worthwhile to mention here that how the plaintiff helped the IOC and what the plaintiff did for IOC, not a single fact has been disclosed by the plaintiff in his plaint. The Court as well as public at large is thereby deprived from knowing the services and any other work by which anyone can get license to own a petrol pump from IOC. Such is case of the plaintiff, then the entire case of the plaintiff is that the plaintiff obtained the license to run petrol pump for consideration of his service and not

because of its eligibility otherwise. It appears that the plaintiff was knowing it well that what he provided to IOC Officers, if will be disclosed by him, he may found himself in trouble, otherwise there was no reason for the plaintiff for suppressing the work done by him for the IOC officer for getting the license in a day for petrol pump. This is unfortunate that even after the decision of Hon'ble Apex Court not in the matter of government contracts but in the matter of allotment of petrol pumps, the pleas are taken by the petrol pump dealer in court that he obtained the license for petrol pump by giving service to oil company (rather to its officers). The reply filed by the IOC also failed in disclosing the complete fact and could not muster courage to show any fact about how IOC approached (if plaintiff is true) the plaintiff out of, leave apart public and even handicapped persons, various other dealers and selected the plaintiff for the purpose of taking work from him. If IOC did not approached the plaintiff, why the application of one of the applicant was found suitable. The IOC failed to disclose by what method and criteria, the plaintiff was selected. This is clear case of hiding the facts even by IOC in this case.

Learned counsel for the respondent no.2 relied upon the judgment of the Hon'ble Apex Court delivered

in the case of Common Cause, A registered Society vs. Union of India and others reported in (1996) 6 SCC 530. This was a matter relating to allotment of petrol pumps. This was the case where the petrol pumps were allotted out of the Minister's discretionary quota in favour of certain persons, therefore, in that case, the Minister had a discretion to allot the petrol pump but the Hon'ble Apex Court, in detail considered that aspect of the matter and took note of the decision given in the year 1979 in Ramana Dayaram Shetty's case wherein it has been held that, “The petrol pumps/gas agencies are a kind of wealth which the Government must distribute in a bona fide manner and in conformity with law.” The Hon'ble Apex Court in the case of Common Cause (supra) observed that Captain Satish Sharma has betrayed the trust reposed in him by the people under the Constitution. The Hon'ble Apex Court also held that, “It is high time that the public servants should be held personally responsible for their malafide acts in the discharge of their functions as public servants.” The Hon'ble Apex Court also observed that, “The Government today in a welfare State provides large number of benefits to the citizens. It distributes wealth in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas and licences etc. Government distributes largesses in various forms and in such matters, a transparent and

objective criteria/procedure has to be evolved so that the choice among the members belonging to the same class or category is based on reason, fair play and non-arbitrariness". The Hon'ble Apex Court held that, "It is essential to lay down as a matter of policy as to how preferences would be assigned between two persons falling in the same category. If there are two eminent sportsmen in distress and only one petrol pump is available, there should be clear, transparent and objective criteria/procedure to indicate who out of the two is to be preferred. Lack of transparency in the system promotes nepotism and arbitrariness. It is absolutely essential that the entire system should be transparent right from the stage of calling for the applications up to the stage of passing the orders of allotment."

It will be worthwhile to recapitulate the facts of the present case in the light of the decision delivered in the Common Cause's case (supra). The Hon'ble Apex Court clearly held that it is absolutely essential that the entire system should be transparent right from the stage of calling for the applications up to the stage of passing the orders of allotment. Here in this case, all facts are kept behind the curtain.

The fact that the petrol pump in question had

already been reserved for handicapped person and allotted to the plaintiff is not only important and startling and shocking fact but the other fact is that in the advertisement dated 18.2.2004 in the clause for eligibility for the applicants is that the petrol pump will not be allotted to those who are already having any petrol pump dealership with them. In this case, the plaintiff in his application dated 23.2.2004 very cleverly mentioned that presently, no adhoc dealership is in the name of plaintiff firm nor the plaintiff firm has any Company Owned Company Operated (COCO) dealership of the petrol pump but at the same time, he very specifically stated that the plaintiff is having highest sale of diesel 500 KL and Petrol 65 KL per month. Therefore, it is clear that the plaintiff, instead of mentioning that he is a dealer or having a dealership license from IOC product only disclosed its business and stated that it is not having adhoc dealership or COCO dealership. The IOC/IOC officers were knowing that the plaintiff is a big dealer of IOC's product and still in violation of the conditions for allotment of the petrol pump published by them, the petrol pump was allotted to the plaintiff. The justification given for allotting the petrol pump for short period on adhoc basis is that in the process of selection of dealer, there was possibility of taking some time and in view of the above fact, the petrol pump was allotted to the plaintiff. Whether this offer

was given to other dealers also to compete with the plaintiff or they were not eligible because other dealer did not work for the IOC officers and thereby they incurred disqualification.

In the advertisement dated 18.2.2004, it is clearly mentioned that the last date for submitting the application was 19.3.2004. Before that on 27.2.2004, the plaintiff's application was taken and he was given the license on 27.2.2004 itself. The Selection Board called the applications for interview and decided the eligibility of the respondent no.2 in a short period but it took some months. Assuming for the sake of arguments that the IOC in its discretion and wisdom thought it fit to allot the petrol pump for running their business but that does not give a license to the IOC to allot petrol pump to a person of their choice by choose and pick only. No justification has been shown either by the plaintiff or the respondent no.1 for opting the process of selection by which the plaintiff was given the license. As stated earlier, according to the plaintiff itself, the petrol pump was obtained by the plaintiff for consideration. The stand taken by the plaintiff requires an investigation by the IOC itself that whether the poor IOC was so helpless that they had to take help from a trader of the city of Jodhpur for getting NOC from the District Collector, Jodhpur for opening the retail outlet. If the IOC was so weak and if the trader was

so strong, even then, if that was the ground for allotment of the petrol pump in favour of the plaintiff, serious action is required to be taken against the IOC Officers who took the benefit from the trader i.e. plaintiff for allotment of petrol pump to it despite the fact that as back as in the year 1996, the Hon'ble Apex Court laid down that in such matters, there should be transparency in the process of allotment of petrol pump from the initial stage.

Otherwise also, it was necessary for the respondent to disclose how the petrol pump was allotted to the plaintiff in view of the fact that in rejoinder, the plaintiff submitted an affidavit before the trial court and levelled serious allegations against the IOC officers of fabrication of letter dated 27.2.2004 and for that purpose, the plaintiff stated on oath that on 27.2.2004, the Senior Divisional Retail Sales Manager Shri Arvind Vijayvargiya was working and he was present in the office but the letter dated 27.2.2004, copy of which is placed on record, disclosed that it bears the signature of another officer for the said Shri Arvind Vijayvargiya. The plaintiff submitted that Shri Arvind Vijayvargiya was since transferred, therefore, the signature of other person was obtained on the letter dated 27.2.2004. Despite this objection raised in the reply affidavit, though no counter affidavit was filed

and in the present appeal, the plaintiff came up with an application, which has been filed after concluding the arguments in this appeal and when the case was fixed for dictation of the judgment, stating that the respondent IOC has cancelled the dealership of the respondent no.2, who was selected by the Selection Board in the category of handicapped person. Since that fact came on record by way of application after the arguments were concluded and the case was fixed for dictation of the judgment, the learned counsel for the respondent IOC who orally stated that the dealership of the respondent no.2 has been cancelled as per his telephonic instructions but he is not aware about any order as he has not received any such order and the learned counsel for the respondent no.2 submits that the respondent no.2 has not received the cancellation order yet. Be it as it may be. As stated earlier, the question of presence of the respondent no.2 is absolutely irrelevant in the fact of the case but his assistance helped the Courts, trial court as well as this Court to decide the appeal, because of the fact that the documents which were produced even by the IOC and which are sought to be challenged by the appellant/plaintiff, are executed by the appellant and accepted by the respondent IOC. It is strange that the undertaking obtained from the plaintiff by the IOC Officer bears no number of letter nor the date of letter on the basis of which the appointment letter

was issued by the IOC to the plaintiff. This undertaking of the plaintiff is duly attested by the Notary Public also. The plaintiff took the benefit of this lacuna left by itself in the undertaking given on stamp of Rs.100/- and that too without explaining, in case, there was no offer letter from IOC and in case, it was not knowing the terms and conditions of the license, then what for the plaintiff signed the written undertaking of one para on stamp paper of Rs.100/- when the plaintiff claiming himself to be big dealer in the same trade and dealing with IOC itself. In the undertaking, the plaintiff very specifically stated as under :-

> "Please refer to your letter No._____ authorising us to run the "A" Site Retail outlet at Bhagat Ki Kothi purely on temporary basis.
>
> We have carefully read the understood the terms and conditions in your letter referred to above and hereby express our agreement to them. We also hereby clearly indemnify IOC against any losses/damages that may be caused or occasioned to IOC on account of any action and/or omission on your part and/or on the part of our employees, agents etc. an also hereby undertake to return vacant and peaceful possession of the retail outlet site in the

same condition in which it was given to us, within one week of our receiving you notice for the same. We further confirm that we will have no claim on IOC in regard to the temporary arrangement referred to in your above letter."

A bare reading of the above undertaking clearly shows that this undertaking was given by the plaintiff to IOC that it has carefully gone through the letter of IOC and it is seeking allotment of petrol pump at Bhagat Ki Kothi and it also stated unequivocally that he carefully read and understood the terms and conditions of the letter and the plaintiff gives unequivocal consent for the above terms and conditions. If there was no terms and conditions settled prior to this undertaking, then under what terms and conditions, the plaintiff obtained the license is not made clear by the plaintiff in its entire plaint or in its application for grant of injunction or in any subsequent affidavit. Not only this, but nothing has been said even in the appeal or during the course of arguments, what were the terms and conditions, for which the plaintiff gave consent. Even if the letter produced by the IOC dated 27.2.2004 is ignored even then the plaintiff's undertaking on stamp paper dated 27.2.2004 is independent and clear undertaking for vacating the petrol pump upon notice,

within one week. In view of the above, the plaintiff hardly has any case to seek relief of injunction as there is no prima-facie case of the plaintiff. Plea of reasonable expectation cannot be accepted against express term of contract in this case.

So far as the contention of learned counsel for the plaintiff that the license issued in favour of the plaintiff by the District Supply Officer is valid upto 31.12.2005 is concerned, it will be worthwhile to mention that the license was issued by the District Supply Officer in the name of the plaintiff in pursuance of the letter which was given by the IOC to the District Supply Officer on 4.3.2004, copy of which is placed on record by the IOC before the trial court. The letter of IOC is very relevant which is as under :-

> "To,
> The District Supply Officer,
> Jodhpur.
>
> Subject : Trading License for MS/HSD for new RO at Bhagat Ki Kothi.
>
> Dear Sir,
>
> We are going to open new RO at Bhagat Ki Kothi, dealership of which has been given to M/s. Dalley Khan & Sons who will be run this RO in the name of Dalley Khan & Sons.
>
> The explosive license no. For this new RO

> is P/NC/RJ/14/1814(P53702) dated 04/03/2004 valid upto 31/12/2005 copy of which is enclosed. A blueprint of the site and copy of NOC from Collector, Jodhpur is also enclosed.
>
> You are also requested to issue trading license to M/s. Dalley Khan & sons, Jodhpur for MS/HSD for this RO.
>
> Thanking you,"

By this letter, the IOC clearly conveyed the District Supply Officer that we are going to open new Retail Outlet (RO) at Bhagat Ki Kothi. Therefore, it is a petrol pump owned and run by IOC cannot be disputed for which license has been given to the plaintiff. In the letter, it has been mentioned that the dealership has been given to M/s. Dalley Khan and Sons (plaintiff) who will run the Retail Outlet in the name of their firm. Therefore, this license was given only for running the petrol pump and not for establishing or installing the petrol pump. In the letter dated 4.3.2004 addressed to District Supply Officer, it has been mentioned that the exclusive license for this retail outlet is valid upto 31.12.2005 and copy of which is enclosed with the letter. A blueprint of the site and copy of NOC from the Collector was also enclosed. In the background of these facts, the IOC only requested to issue a trading

license for M/s. Dalley Khan & Sons for this retail outlet. In the letter, it has nowhere been mentioned that the license be issued in favour of the plaintiff for a period upto 31.12.2005. The validity of license, which was issued in favour of IOC, was upto 31.12.2005. Therefore, simply because it is mentioned in the license issued by the IOC under the provisions of Rajasthan Petroleum Products (Licensing and Control) Order, 1990 that the license is upto 31.12.2005. IOC nowhere conveyed that for entire period, the license is to be granted to the appellant. Apart from it, the plaintiff despite knowing it well that he obtained license on the basis of the letter of IOC dated 4.3.2004 and that letter had attached document blueprint of site plan, still the plaintiff, without disclosing this fact, filed the suit for injunction questioning the location of the petrol pump of the plaintiff and disputed that the location of the petrol pump though the petrol pump is situated in Bhagat Ki Kothi, is a different petrol pump than the petrol pump sought to be given by the advertisement dated 18.2.2004. Not only above, it appears from the plaint as well as from the injunction application itself that the plaintiff did not disclose that it executed and submitted various documents before the IOC describing the petrol pump to be at Bhagat Ki Kothi. It appears that the plaintiff was wise enough and obtained the petrol pump after it was advertised

and he took steps to get the pump. Not only this but the process of selection for the petrol pump in pursuance of the advertisement dated 18.2.2004 started, atleast in the knowledge of the appellant from 18.2.2004 and he filed the suit for injunction on 4.11.2004 and during this period, interview took place from 22.10.2004 and the select list was declared on 22.10.2004 itself.

In view of the above facts also, it appears that the plaintiff was knowing all the facts about process of selection of a candidate for allotment of petrol pump which the plaintiff is occupying and he submitted the application for grant of injunction.

The plaintiff since challenged the finding of the trial court's order recorded on principally two issues which are about identity of petrol pump in question and reasonable expectation of the plaintiff for getting renewal of the license for the further period of two years and for his right to continue with the petrol pump in the light of the license granted in the name of the plaintiff by the District Supply Officer containing a term upto 31.12.2005. Therefore, all the facts were examined by this Court to find out whether there is error of fact committed by the court below in identifying the property. The property, as stated above, is admittedly situated in Bhagat Ki Kothi area and the plaintiff failed to produce any cogent

evidence in support of his case that there are two petrol pumps as described in the news item dated 18.2.2004 and the petrol pump which was allotted to the plaintiff. Request of the plaintiff for summary of the documents from IOC when the case was fixed for dictation of order cannot be accepted firstly, the application itself is not maintainable after hearing and secondly the application has been filed after inordinate delay without disclosing any reason for not filing the application before the trial court and thereafter along with the appeal. In the light of the facts pleaded by the plaintiff also, the documents are not relevant.

The plaintiff also submitted for taking on record subsequent event of cancellation of petrol pump of the respondent no.2. The cancellation of petrol pump by IOC is of no consequence in view of the fact that it is immaterial whether the petrol pump is allotted to the respondent no.2 or to any person. This Court is not concerned as it is not subject matter of this appeal or suit. The question is act and omission of the plaintiff and defendants in the matter of allotment of petrol pump in the light of the claim of the plaintiff and in the light of stand taken by the defendants. Even if the respondent no.2 is deleted from the party from even the suit or from this appeal, it will not strengthen the case of the plaintiff in

any manner. Therefore, the appellant's application dated 9.9.2005 is dismissed.

In view of the above, the appeal of the appellant deserves to be dismissed but with direction to the respondent IOC to enquire into the matter of allotment of petrol pump to the plaintiff on adhoc basis and if it is found that the license to run petrol pump was obtained by the plaintiff, as stated by him, for consideration which is impermissible and the petrol pump was otherwise allotted in violation to law laid down by the Hon'ble Supreme Court in the case of Common Cause (supra), stern action be taken against the guilty IOC Officers.

Learned counsel for the respondent no.2 prayed that exemplary costs be awarded to him against the appellant. It is not in dispute that in the trial court, no interim order was passed in favour of the plaintiff, therefore, interest of the defendant no.2 was not affected by the court proceedings. In this Court, interim order was passed on 21.12.2004 permitting the petitioner to continue with the business of the petrol pump in dispute. Looking to the fact at this stage that according to the respondent no.1 also, the license of the respondent no.2 has been cancelled, therefore, it will not be just and proper to impose costs in favour of the respondent no.2 at

this stage leaving the respondent no.2 to take appropriate steps, if advisable, for getting damages for suffering of loss to him, before appropriate forum which is permissible in law including in this suit itself. The prayer for award of costs in favour of the respondent no.2 is, therefore, rejected.

It appears that the plaintiff filed the injunction application by suppressing material facts and facts warrants exemplary costs against the plaintiff but not in favour of either of the respondents.

In view of the above discussion, this appeal is dismissed with a costs of Rs.10,000/- which may be deposited by the appellant within a period of two months from today with the Rajasthan High Court Legal Services Authority.

Copy of this order be sent to Chairman, Indian Oil Corporation and to Petroleum Ministry for appropriate action.

(PRAKASH TATIA), J.

S.Phophaliya